

I understand there is a lobbying effort going on by companies that want to repeal or water down the recent changes in the regulations implementing the TCPA. These efforts should be rejected. We have had ten years of proof the previous regulations weren't sufficient to protect the privacy and property rights of both consumers and other businesses.

The revisions to the rules pertaining to unsolicited fax advertisements are particularly necessary. As newsletter editor for a community organization, I keep a fax machine on my home telephone line. And like most other fax owners in the US, I suffer the disruption and intrusion of junk faxing. Some of these calls are coming in during the middle of the night--earlier this month I was waken up three times between midnight and 5:00 am by three different junk fax calls.

When possible, I try use the legal recourses provided under the TCPA to try and stem the tide. Since 1997, I have brought three suits for damages under the TCPA, and settled out of court with a handful of other advertisers. According to some who are lobbying against the regulations, this makes me an "extortionist." In fact, I have not received one dime of recompense for my efforts to have this law enforced. Two junk fax companies have folded rather than paying damages, and my third case is pending. The proceeds of my settled cases go to a local charity. The allegation that the private right of action in TCPA cases is legal means to extort money from innocent businesspeople is just a smokescreen designed to divert attention from the real wrongdoing in these cases.

I am writing in particular support of the new regulations for obtaining and demonstrating consent to receive fax advertisements, in paragraph 64.1200(a)(3)(i).

In my first two court cases, the defendant tried to claim I the faxes were solicited, and submitted a telephone message slip with my number written on it as evidence. Of course, the message was a forgery, but they were accepted and the cases became my word against the defendant's. Since my cases were in a small claims court and not a court of record (the intent of the law is to provide for quick and efficient enforcement through these local courts), the defendant could do this without risk of perjury, and make my prima facie case into a crapshoot, hoping the court will misunderstand the law, decide that \$500 damages for a single fax is unreasonable, and dismiss the case as a result.

Unfortunately, hard-core junk fax offenders have exploited this loophole to try and avoid responsibility, as demonstrated in the case of Charles Martin. According to the California petition to revoke Martin's investigator license, he routinely uses forged telephone messages as a defense when his clients are hauled into court. So while it will be a burden on other businesses to obtain a signature as well as a fax number to document consent, the new requirement is essential to the interest of justice.

It is also in the interest of justice that FCC correct any misunderstandings about the law, particularly the fax that the law has never provided an "established business relationship" exemption from the unsolicited fax advertisement provisions.

I have also found in my court cases that defendants will also try and misrepresent the clear words and meaning of the TCPA in order to try and avoid responsibility. FCC should expressly state that publication of a fax number in

a directory or on a web page is not consent to receive fax advertisements, and that the law applies to business telephone lines and residential lines used by home-based businesses or by non-profit organizations, just as it applies to purely residential telephone lines.

FCC needs better tools to take action against the most egregious junk fax offenders, particularly the bulk fax companies like Fax.com and the "pump and dump" stock scammers. The proposed revisions to the regulations clear away some of the ambiguity Fax.com has tried to defend itself with. FCC should also consider issuing a finding that commercial communications describing a particular stock or other investment are advertisements, even if the sender is not personally selling the stock.

Other provisions of the revised regulations are welcome too, particularly the regulations on predictive dialers and caller ID. Technology advances have increased the efficiency with which marketing firms can invade citizens' privacy and avoid responsibility for their conduct, and the law must keep up. While I think the threshold for predictive dialer calls abandoned by the caller should be zero, the 3% threshold is an acceptable compromise, assuming that firms using predictive dialers actually comply with it. FCC was wise to put the burden on users of predictive dialers to document their compliance with this provision. FCC should clarify that the regulation of predictive dialer use applies equally to commercial and non-commercial users.

Finally, although this is not germane to the present rulemaking, I'd like to urge FCC to take more visible actions against hard-core junk fax offenders like Fax.com and Market News Alert. The notices of apparent liability previously issued to these offenders have not had any effect on their conduct, and civil forfeitures may not affect these people either, as they set up and fold companies to skirt the law, and arrange their financial affairs so as to be judgement-proof. These offenders won't stop junk faxing until they face personal liability and even jail time for criminal contempt.